

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
ROCKLAND VENDING CORP.,

Plaintiff,

-against-

ROXANNE CREEN, sued in her individual capacity;  
MARSHA F. RILEY, sued in her individual  
capacity; and STEWART KIDDER, sued in his  
individual capacity,

Defendants.

----- x

101 East Post Road  
White Plains, New York  
February 12, 2008  
10:00 a.m.

EXAMINATION UNDER OATH of  
CHERYL FREED, a witness on behalf of  
the Plaintiff, ROCKLAND VENDING, CORP.,  
held at the above time and place and  
before a Notary Public of the State of  
New York.

U.S. LEGAL SUPPORT, INC.  
1 Penn Plaza, Suite 1410  
New York, New York 10119  
(212) 759-6014

APPEARANCES:  
 SUSSMAN LAW OFFICE  
 Attorney for Plaintiff  
 PO Box 1005  
 Goshen, New York 10924  
 BY: MICHAEL H. SUSSMAN, ESQ.  
 (845) 294-3991

STATE OF NEW YORK  
 OFFICE OF ATTORNEY GENERAL  
 ANDREW M. CUOMO  
 Attorneys for Defendants  
 120 Broadway  
 New York, New York 10271-0332  
 BY: DANIEL SCHULZE  
 Assistant Attorney General  
 (212) 416-6557

ALSO PRESENT:  
 MICHAEL FREED

[Page 2]

1 4  
 2 CHERYL FREED, having been sworn by  
 3 Kathryn MacDonald, a Notary Public of  
 4 the State of New York, and stating her  
 5 address as 11 South DeBaun Avenue,  
 6 Airmont, New York, was examined and  
 7 testified as follows:  
 8 EXAMINATION BY  
 9 MR. SCHULZE:  
 10 Q. Good morning, Ms. Freed.  
 11 Have you ever been deposed before?  
 12 A. No.  
 13 Q. Without telling me what you  
 14 said, did you talk to your attorney in  
 15 preparation for this deposition?  
 16 A. Just for a few moments.  
 17 Q. Did he explain to you how a  
 18 deposition works?  
 19 A. Yes.  
 20 Q. I'm just going to go over some  
 21 ground rules. I'm going to be asking you  
 22 questions and you are under oath. You have to  
 23 answer; do you understand that?  
 24 A. Yes.  
 25 Q. Your answers have the same force

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IT IS HEREBY STIPULATED AND AGREED by  
 and between counsel for the respective parties  
 hereto that all rights provided by the  
 C.P.L.R., including the right to object to any  
 question except as to form, or to move to  
 strike any testimony at this examination are  
 reserved, and in addition, the failure to  
 object to any questions or to move to strike  
 testimony at this examination shall not be a  
 bar or waiver to make such motion at and is  
 reserved for the trial of this action.

IT IS FURTHER STIPULATED AND AGREED  
 that this examination may be sworn to by the  
 witness being examined before a Notary Public  
 other than the Notary Public before whom this  
 examination was begun; but failure to do so  
 or to return the original of this examination  
 to counsel shall not be deemed a waiver of the  
 rights provided by Rules 3116 and 3117 of the  
 C.P.L.R., and shall be controlled thereby.

IT IS FURTHER STIPULATED AND AGREED  
 that the sealing and filing of the original of  
 this examination shall be and the same are  
 hereby waived.

[Page 3]

1 Cheryl Freed 5  
 2 and effect as if you were giving them in court.  
 3 Do you understand that?  
 4 A. Yes.  
 5 Q. And unless your attorney gives  
 6 you an instruction not to answer, you have to  
 7 answer my questions; do you understand that?  
 8 A. Yes.  
 9 Q. Are you on any medication today?  
 10 A. Yes.  
 11 Q. What's the medication?  
 12 A. I'm on an anti-cancer  
 13 medication. I'm on stomach medication and a  
 14 antidepressant.  
 15 Q. Does any of that medication  
 16 affect your ability to give true and accurate  
 17 testimony?  
 18 A. No.  
 19 Q. Does it affect your memory in  
 20 any way?  
 21 A. No.  
 22 Q. Is there any other reason why  
 23 your deposition can't go forward this morning?  
 24 A. No.  
 25 Q. What did you do to prepare for

[Page 5]

[2] (Pages 2 to 5)

1 Cheryl Freed 6	1 Cheryl Freed 8
2 your deposition today?	2 A. In the vending business you have
3 A. Nothing really. Just think	3 to count money and receipts.
4 about things in my head, what took place during	4 Q. How long have you been doing
5 certain dates and times and things like that;	5 that?
6 to the best of my knowledge.	6 A. I have been doing it on and off
7 Q. You met with Mr. Sussman this	7 for years. Sometimes I have help, sometimes I
8 morning?	8 don't.
9 A. For a few minutes, yes.	9 MR. SCHULZE: If at any time I
10 Q. Did you review any deposition	10 start to ask a question and you were
11 transcripts?	11 not finished, you just tell me you
12 A. No.	12 were not finished; okay?
13 Q. Did you talk to your husband?	13 THE WITNESS: Okay.
14 A. Yes.	14 Q. Were you counting money in May
15 Q. What did you say to him and what	15 of 2007?
16 did he say to you?	16 A. No.
17 MR. SUSSMAN: You don't have	17 Q. When you say you handle all the
18 to answer that. Conversations between	18 purchases for Rockland Vending, what are you
19 husband and wife are privileged.	19 referring to?
20 A. We didn't talk about anything	20 A. All the supplies that go into
21 specific. He was just that I shouldn't be	21 the vending machines; snacks, sodas, chips.
22 nervous and just answer to the best of my	22 Anything related to what we need to stock the
23 knowledge.	23 vending machines.
24 Q. You are employed by Rockland	24 Q. How about the machines
25 Vending Corporation?	25 themselves?
[Page 6]	[Page 8]
1 Cheryl Freed 7	1 Cheryl Freed 9
2 A. Yes.	2 A. No.
3 Q. What is your position?	3 Q. When you say "payroll," what are
4 A. I'm the office manager.	4 you referring to?
5 Q. Any other title?	5 A. I have to do the time cards,
6 A. No.	6 figure out how much everyone is going to make
7 Q. How long have you acted as the	7 for their work, call in to pay checks.
8 office manager?	8 Q. In May of 2007, how many
9 A. It's got to be at least twenty	9 employees were on Rockland's payroll?
10 years.	10 A. I would say approximately
11 Q. Have you had the same position	11 eighteen to twenty. We were not exactly sure
12 the whole time?	12 but around that figure.
13 A. Yes, basically.	13 Q. Is that eighteen to twenty
14 Q. What are your duties as office	14 employees?
15 manager?	15 A. Yes; including my husband and
16 A. I do all the purchasing. I do	16 myself.
17 all the employee payroll. I do accounts	17 Q. Was Mr. Gallagher on the payroll
18 receivable, accounts payable. And at the	18 in May of 2007?
19 present time, I'm processing money, also.	19 A. Yes.
20 And what else do I do? Basically, that's it;	20 Q. So he was an employee of
21 just oversee the office.	21 Rockland?
22 Q. Did you say you were processing	22 A. Yes, he was.
23 money?	23 Q. As part of your duties in 2007,
24 A. Yes.	24 did you monitor the status of payments on
25 Q. What does that mean?	25 contracts with the Department of Correctional
[Page 7]	[Page 9]

[3] (Pages 6 to 9)



1 Cheryl Freed 10	1 Cheryl Freed 12
2 Services?	2 A. Yes.
3 A. I didn't really monitor them.	3 Q. Which facilities; if you recall?
4 I had a bookkeeper at the time. Usually her	4 A. Probably Shawangunk, Otisville,
5 and Mr. Freed worked together as far as things,	5 Woodburne Correctional.
6 you know, she would cut checks for. I mean,	6 Q. Is it fair to say there could
7 obviously, I understood what was going on but I	7 have been others?
8 wasn't directly making payments at that time.	8 A. Yes, but I can't know exactly
9 Q. How did you understand what was	9 off the top of my head.
10 going on?	10 Q. Do you know how far behind
11 A. Well, I was usually in on the	11 Rockland was in payments to Shawangunk in May
12 meetings for accounts payable.	12 of 2007?
13 Q. Who was in on those meetings?	13 A. I would estimate one to two
14 A. Myself, Mike and Gail who was	14 months.
15 the bookkeeper at the time.	15 Q. What's the basis of your
16 Q. At those meetings, did you	16 estimate? What do you recall?
17 discuss the current payment status of the	17 A. Because that's usually -- one to
18 Department of Correctional Services contracts?	18 two months was probably what it was.
19 A. Sometimes.	19 Q. Why do you think that?
20 Q. Do you have a log of phone calls	20 A. Just off the top of my head.
21 that you make and receive at the office?	21 I don't know.
22 A. A log?	22 Q. Have you reviewed the complaint
23 Q. Yes.	23 in this case?
24 A. No.	24 A. Reviewed what complaint?
25 Q. Do you keep any kind of records	25 Q. Do you know what a legal
[Page 10]	[Page 12]
1 Cheryl Freed 11	1 Cheryl Freed 13
2 of phone calls on a regular basis?	2 complaint is?
3 A. Just, basically, the	3 A. Not really. I don't know the
4 receptionist and I both have a spiral notebook	4 terminology.
5 that we take messages. We started doing that,	5 Q. Have you ever seen a document
6 I don't know, just recently, because if you	6 that was filed in court on behalf of Rockland
7 don't, sometimes you lose messages.	7 Vending Corporation in which you ask for money
8 Q. When you say you started doing	8 from various DOCS employees?
9 that just recently, when did you start?	9 MR. SUSSMAN: Objection.
10 A. The receptionist, I don't recall	10 A. Where I asked for money?
11 how long she has been -- she's always done	11 Q. Where Rockland Vending
12 that. I used to just scribble on a pad and	12 Corporation asked for money.
13 then throw the messages away, but when you are	13 A. Asked for money? We usually had
14 taking orders and things like that, sometimes	14 to pay them. I don't understand.
15 things get lost. When I saw her doing that,	15 Q. Are you aware that the Rockland
16 I thought that's not a bad idea so I started	16 Vending Corporation has sued various DOCS
17 doing it also. Might be a month or so.	17 employees?
18 Q. Were you keeping such a spiral	18 A. Well, just recently.
19 notebook in May of 2007?	19 Q. That's what I am referring to.
20 A. No.	20 A. Oh, okay.
21 Q. Was the receptionist?	21 Q. Have you seen the complaint in
22 A. She could have been but I'm not	22 this case?
23 sure.	23 A. The actual complaint? I don't
24 Q. In May of 2007, did Rockland owe	24 know if I have actually seen the written
25 commissions to any DOCS facilities?	25 complaint. No.
[Page 11]	[Page 13]

[4] (Pages 10 to 13)

1 Cheryl Freed 14	1 Cheryl Freed 16
2 Q. For the record, is this your	2 A. It was Roxanne Creen.
3 husband in the room here?	3 Q. What did she say to you and what
4 A. Yes.	4 did you say to her on that phone call?
5 Q. And he is the president of	5 A. Basically, she said to me, "I'm
6 Rockland Vending Corporation; is that right?	6 going to tell you something and you are not
7 A. Yes.	7 going to be happy about what I am going to tell
8 Q. Have you seen an affidavit that	8 you." But she said, "You owe us commissions.
9 your husband prepared in connection with this	9 Your driver was here. We proceeded to hold him
10 case?	10 in our facility and we demanded that he take
11 A. I never saw anything in writing,	11 the money out of the machine."
12 no.	12 And I said to her, "How can you
13 Q. Did he ever talk to you about	13 do that?"
14 filing an affidavit in this case?	14 And she said to me, "Well, we
15 A. What do you mean "an affidavit"?	15 did it. We are going to keep doing it until
16 Q. A sworn written statement.	16 you pay us all of the money."
17 A. In regards to?	17 And I said, "You can't do that."
18 Q. This case.	18 Or something to that affect. I don't remember
19 A. We talked about it but I have	19 the exact words. So I asked, "Is my driver
20 never seen anything in writing.	20 okay?" And she said, yes, that he was probably
21 Q. What have you talked about in	21 on the way back. That he had already left.
22 this connection?	22 And I said, I told her that, you know, we have
23 A. Just about what had occurred in	23 to process the money and that usually the
24 Shawangunk in May.	24 driver is not allowed to count money. She told
25 Q. When did you have that	25 me that she took the money and wrote down each
[Page 14]	[Page 16]
1 Cheryl Freed 15	1 Cheryl Freed 17
2 conversation?	2 machine, what money came out of what machine
3 A. Various times; when it happened,	3 And I was in shock. And I don't
4 afterwards.	4 even know what I said after that. And I just
5 Q. Let's go to the date it	5 remember her telling me that, "I am going to
6 happened. When was that?	6 keep doing this until you pay us all the
7 A. May 9th.	7 money." And at that point we hung up. And
8 Q. When was the first time you	8 about maybe ten or fifteen minutes later my
9 heard anything about what was going on in	9 driver Ken Gallagher walked in the door.
10 Shawangunk on that date?	10 Q. Have you told me everything you
11 A. I had received a call from	11 recall about that phone call?
12 Roxanne Creen from Shawangunk.	12 A. Yes.
13 Q. Were you the one that answered	13 Q. Did you ask Ms. Creen to fax you
14 the phone?	14 copies of the invoices?
15 A. I believe so. I don't know if I	15 A. I think she told me she was
16 answered the phone or if she was on the phone	16 going to do that. Either I asked her or she
17 for me --	17 told me. I don't know if I asked her or she
18 Q. What time was this?	18 said she was going to but I did receive them on
19 A. Mid-morning. I don't know	19 the fax.
20 exactly but I would say mid-morning.	20 Q. Did you keep them?
21 Q. When you say "mid-morning," what	21 A. Yes.
22 time are you referring to?	22 Q. Do you still have them in your
23 A. Ten-ish; ten, eleven.	23 possession?
24 Q. When you answered the phone, who	24 A. Probably in the files.
25 was on the other end?	25 MR. SCHULZE: I'm going to ask
[Page 15]	[Page 17]

[5] (Pages 14 to 17)

1 Cheryl Freed 18	1 Cheryl Freed 20
2 that those be turned over.	2 that conversation?
3 MR. SUSSMAN: What do you want?	3 A. We probably discussed about what
4 The receipts? The faxes that you all	4 happened.
5 sent, you have the originals	5 MR. SUSSMAN: Don't guess. If
6 of them.	6 you don't remember, please indicate
7 MR. SCHULZE: I particularly	7 that you don't remember. You are
8 want the faxes with the fax line on it	8 under oath. If you don't know what
9 showing when it was received.	9 happened, don't say "probably."
10 MR. SUSSMAN: Sure.	10 MR. SCHULZE: Yes, I agree with
11 (To witness): That means	11 that.
12 you have to go back to your records.	12 MR. SUSSMAN: The question is,
13 If you have that document, give that	13 did you talk to anybody else --
14 document to me; okay?	14 A. Yes. What the conversation was,
15 THE WITNESS: Okay.	15 I don't know. I can't tell you word-for-word.
16 MR. SCHULZE: Thank you.	16 Q. Can you tell me generally?
17 Q. I believe you just said that ten	17 A. Not word-for-word.
18 or fifteen minutes after you hung up with	18 Q. Okay. I'm not asking
19 Roxanne, Mr. Gallagher walked in the door?	19 word-for-word.
20 A. Yes.	20 MR. SUSSMAN: When you are
21 Q. Between the time you hung up	21 asked about a conversation and it
22 with Roxanne and Mr. Gallagher walked in the	22 happened months ago, you can give the
23 door, did you talk to anybody else about what	23 substance of the conversation, even if
24 happened at Shawangunk?	24 you don't remember the exact words.
25 A. Yes, I immediately called Mike,	25 Counsel is asking you what happened in
[Page 18]	[Page 20]
1 Cheryl Freed 19	1 Cheryl Freed 21
2 my husband.	2 this conversation. The expectation
3 Q. Did you reach him?	3 is not that you remember every word
4 A. He was out on the road at that	4 but if you have some understanding or
5 time but I reached him by cell phone.	5 memory, other than speculation as to
6 Q. What did you say to him and what	6 what you said, if you have that much,
7 did he say to you?	7 you can testify under oath about what
8 A. I exactly related what Roxanne	8 was said even though it's not
9 told me what happened and I told him -- he	9 word-for-word.
10 asked me, you know, where is Ken, is he okay?	10 A. I believe we spoke about the
11 I said, he just walked in. This was like a few	11 situation, what happened to the driver,
12 minutes ago. And then he said, okay, and he	12 what-not. But word-for-word, I don't know.
13 hung up and that was it.	13 Q. Do you remember if she said
14 Q. Did he tell you to do anything?	14 anything to you?
15 A. No.	15 A. No, I don't believe so.
16 Q. Did he say he was going to do	16 Q. What happened when Mr. Gallagher
17 anything?	17 came?
18 A. Not at that point, no.	18 A. I asked him, "How are you?"
19 Q. Did you talk to anybody else	19 He proceeded to tell me what had happened at
20 before Mr. Gallagher walked in?	20 Shawangunk. He was pretty shook up. You know,
21 A. I might have talked to someone	21 he told me he tried to call our office. He
22 in the office.	22 asked them to call. They would not let him
23 Q. Who?	23 call. I asked him, did you have your cell
24 A. Maybe the receptionist.	24 phone at the time? He said no. And that was
25 Q. Do you recall anything about	25 basically it.
[Page 19]	[Page 21]

[6] (Pages 18 to 21)



1 Cheryl Freed 22  
 2 Q. Did you talk to Mr. Gallagher in  
 3 preparation for this deposition?  
 4 A. No.  
 5 Q. You said he told you what had  
 6 happened at Shawangunk. Do you recall exactly  
 7 what he said?  
 8 A. Basically, that, you know, they  
 9 had, Roxanne Creen had demanded the money from  
 10 the machines and that he said he tried to call  
 11 the office but they would not let him have  
 12 access to a phone and that he proceeded to take  
 13 the money out of the machines. And I told him  
 14 it's okay. Normally, the driver would not be  
 15 allowed to give the money to anyone. And I  
 16 told him it's okay. He was very nervous that  
 17 he was doing that. I explained to him it's  
 18 okay, and that was about it. And he  
 19 immediately came back from the facility after  
 20 that happened.  
 21 Q. Do you know what time it was  
 22 when he came into the office?  
 23 A. Not the exact time; no.  
 24 Q. How many times did you talk to  
 25 Roxanne Creen that day?

[Page 22]

1 Cheryl Freed 23  
 2 A. Just the one time that she  
 3 called.  
 4 Q. Had she left any messages  
 5 earlier that day?  
 6 A. Not that I recall.  
 7 Q. Did you ask?  
 8 A. Did I ask her?  
 9 Q. Did you ask anyone that day  
 10 whether there were any messages left?  
 11 A. No, because usually my  
 12 receptionist is pretty diligent about who  
 13 called. Normally, we have voice mail so if I  
 14 was on the phone she would have transferred it  
 15 to the voice mail.  
 16 Q. Did you check your voice mail  
 17 that day?  
 18 A. Yes, I check it like every five  
 19 minutes. There was no one on the phone.  
 20 Q. When you say there was no one on  
 21 the phone --  
 22 A. There was no one on the voice  
 23 mail.  
 24 Q. When you saw Mr. Gallagher, was  
 25 he angry?

[Page 23]

1 Cheryl Freed 24  
 2 A. He was more shook up. You know,  
 3 nervous and shook up. I don't recall him being  
 4 angry. He was more shook up.  
 5 Q. What led you to that belief?  
 6 A. He was very nervous, talking a  
 7 mile a minute. Just very nervous. He didn't  
 8 appear to be angry.  
 9 Q. After he told you what had  
 10 happened at Shawangunk, what did you do?  
 11 A. At that point, I just continued  
 12 on with what I was doing in the office. I had  
 13 already called Mike at that point. Ken had  
 14 gone back to load his truck and I just  
 15 continued on with what I was doing.  
 16 Q. Is it fair to say that you were  
 17 letting Mike handle it?  
 18 A. At that point, yes.  
 19 Q. When you say, "at that point,"  
 20 what do you mean?  
 21 A. Well, after the phone call; yes.  
 22 Q. In other words, after you had  
 23 talked to Mr. Freed, you were letting Mr. Freed  
 24 handle it; is that fair?  
 25 A. Basically, he was handling it at

[Page 24]

1 Cheryl Freed 25  
 2 that point.  
 3 Q. Did there come a time when  
 4 Mr. Freed called you back on that date?  
 5 A. I believe so, yes.  
 6 Q. Do you recall when that was?  
 7 A. No.  
 8 Q. Can you tell me whether it was  
 9 morning or afternoon?  
 10 A. Probably afternoon. I mean, we  
 11 talk to each other ten times a day, probably  
 12 more.  
 13 Q. Before or after lunch?  
 14 A. I don't recall.  
 15 Q. What did he say on this phone  
 16 call and what did you say to him?  
 17 MR. SUSSMAN: Basically, asking  
 18 about the next phone call that you  
 19 have memory of with your husband.  
 20 A. I don't know. Like I said, we  
 21 spoke, could be ten, fifteen times a day, so I  
 22 don't know what the conversation of the next  
 23 phone call was.  
 24 Q. How many times did you speak to  
 25 Mr. Freed on this day?

[Page 25]

[7] (Pages 22 to 25)

1 Cheryl Freed 26	1 Cheryl Freed 28
2 A. I have no idea.	2 what happened at Shawangunk?
3 Q. More or less than usual?	3 A. I don't believe so but I'm not
4 A. I don't know. Honestly, I don't	4 one hundred percent sure.
5 know. We go back and forth all day long with	5 Q. Do you know whether Roxanne
6 situations and conversations. I don't know.	6 Creen spoke to anybody else at Rockland Vending
7 Q. Did there come a point when	7 on May 9th?
8 Mr. Gallagher talked to the police?	8 A. Not that I am aware of.
9 A. He didn't tell me that. At that	9 Q. Do you know whether such a call
10 point, when he walked in, he didn't say that to	10 occurred or not?
11 me.	11 MR. SUSSMAN: Objection. She
12 Q. Who?	12 just said, not that she's aware of.
13 A. Ken.	13 Q. I'm trying to find out if that
14 Q. He didn't say that he had gone	14 means that you know that such calls didn't
15 to the police?	15 occur or you're not sure whether such calls
16 A. No. He just came from	16 occurred.
17 Shawangunk when I saw him.	17 A. I don't believe there was any
18 Q. Did there come a point when	18 such call.
19 anyone at Rockland told Mr. Gallagher to go to	19 Q. Why?
20 the police?	20 A. If she called the receptionist,
21 A. I believe Mr. Freed but I was	21 the receptionist would have said I was on the
22 not part of that conversation.	22 phone and sent it to my voice mail at that
23 Q. Were you aware of that	23 time, so I would have known if someone had
24 conversation?	24 called. That's usual protocol in the office.
25 A. Yes.	25 Q. Do you know whether anyone
[Page 26]	[Page 28]
1 Cheryl Freed 27	1 Cheryl Freed 29
2 Q. How were you aware of it?	2 called Mr. Freed directly?
3 A. Hearsay; hearing about it.	3 A. I know I did.
4 Q. On that day?	4 Q. Do you know whether anyone from
5 A. I assume so.	5 DOCS called Mr. Freed directly?
6 Q. Let's try it this way. After	6 A. I would not know.
7 Mr. Gallagher talked to you about what had	7 Q. Do you know whether Mr. Freed
8 happened at Shawangunk, what did he do?	8 called anyone at DOCS directly that day?
9 A. He went to the warehouse to load	9 A. I don't know.
10 his truck.	10 Q. Without telling me what was
11 Q. Why was he going to the	11 said, did you consult an attorney that day?
12 warehouse to load his truck?	12 A. Not me personally, no.
13 A. That's what he does everyday.	13 Q. Do you know if anyone did?
14 Q. He was going to the next	14 A. I don't know.
15 facility?	15 Q. Did Mr. Gallagher come to work
16 A. They load the truck for the next	16 on May 10th?
17 day.	17 A. I believe so.
18 Q. So he was preparing for his work	18 Q. Did he go out on his route?
19 for the next day; is that correct?	19 A. Yes.
20 A. Yes.	20 Q. Did you ever instruct
21 Q. Is that the last time you saw	21 Mr. Gallagher not to return to Shawangunk?
22 him that day?	22 A. Honestly, he, himself, was a
23 A. I don't know.	23 little nervous to do that and I did not think
24 Q. Did you have any more	24 it was a safe situation. I did not personally
25 conversations that day with Mr. Gallagher about	25 tell him not to do that but I didn't think it
[Page 27]	[Page 29]

[8] (Pages 26 to 29)



<p>1 Cheryl Freed 30</p> <p>2 was a safe situation for him to put himself in.</p> <p>3 Q. Did Mr. Freed tell him not to go</p> <p>4 back to Shawangunk?</p> <p>5 A. That, I don't know.</p> <p>6 Q. What was the first DOCS facility</p> <p>7 that terminated its contract with Rockland?</p> <p>8 MR. SUSSMAN: Ever?</p> <p>9 MR. SCHULZE: Ever.</p> <p>10 A. That terminated? I think</p> <p>11 Shawangunk might have been the first.</p> <p>12 Q. Did any other facility terminate</p> <p>13 a contract with Rockland?</p> <p>14 A. Not that I know of.</p> <p>15 Q. Did any other facilities not</p> <p>16 exercise an option to renew a contract with</p> <p>17 Rockland?</p> <p>18 A. Just recently? What time frame</p> <p>19 are we talking about?</p> <p>20 Q. I'm referring to "ever" right</p> <p>21 now, but if that's too hard I will narrow it</p> <p>22 down.</p> <p>23 A. I think definitely Shawangunk.</p> <p>24 I don't know if we were on extension there.</p> <p>25 Q. From 2000 --</p> <p style="text-align: right;">[Page 30]</p>	<p>1 Cheryl Freed 32</p> <p>2 Shawangunk on May 9th; right?</p> <p>3 A. I have never been to Shawangunk.</p> <p>4 Q. So is it fair to say that all</p> <p>5 you know about what happened in Shawangunk on</p> <p>6 that day is coming from what Mr. Gallagher told</p> <p>7 you?</p> <p>8 A. No. From the phone call from</p> <p>9 Roxanne Creen, that was basically where I found</p> <p>10 out everything.</p> <p>11 Q. Anything else?</p> <p>12 A. From Mr. Gallagher. I guess</p> <p>13 that's about it.</p> <p>14 Q. If a contract is terminated, do</p> <p>15 you keep any written record of the event?</p> <p>16 A. If there was a written</p> <p>17 correspondence we might have that; yes.</p> <p>18 Q. Do you make an entry anywhere</p> <p>19 into a log?</p> <p>20 A. No.</p> <p>21 Q. Do you keep a calendar?</p> <p>22 A. Yes.</p> <p>23 Q. At the office?</p> <p>24 A. Yes. Basically for employees,</p> <p>25 who is to be taking a vacation day; that kind</p> <p style="text-align: right;">[Page 32]</p>
<p>1 Cheryl Freed 31</p> <p>2 A. I really wasn't -- my position,</p> <p>3 I really wasn't into the actual contracts of</p> <p>4 the facility.</p> <p>5 Q. When you say you are not into</p> <p>6 the actual contracts --</p> <p>7 A. I'm not the one who bids on the</p> <p>8 locations and I'm not familiar with which</p> <p>9 facility had additional -- what do you call it</p> <p>10 -- you just referred to what it was -- I'm not</p> <p>11 sure which facilities were on a full contract</p> <p>12 or extended. I'm not familiar with that.</p> <p>13 Q. Do you have any legal training?</p> <p>14 A. No.</p> <p>15 Q. Do you have any involvement with</p> <p>16 the drafting of the contracts?</p> <p>17 A. In the drafting? No.</p> <p>18 My only situation with contracts</p> <p>19 is if we were bidding on, say, a bulk where</p> <p>20 someone wanted the prices on the candy, I would</p> <p>21 work up the percentage on the product, because</p> <p>22 I'm the one that's ordering them. But as far</p> <p>23 as the overall contracting, I did not do any of</p> <p>24 that.</p> <p>25 Q. You were not present in</p> <p style="text-align: right;">[Page 31]</p>	<p>1 Cheryl Freed 33</p> <p>2 of thing.</p> <p>3 Q. Would it have any entries</p> <p>4 relating to contracts?</p> <p>5 A. No.</p> <p>6 Q. Do you keep a correspondence log</p> <p>7 showing when letters are received?</p> <p>8 A. No.</p> <p>9 Q. Have you ever spoken to Stewart</p> <p>10 Kidder?</p> <p>11 A. No.</p> <p>12 Q. Have you ever spoken to George</p> <p>13 Glassano?</p> <p>14 A. No.</p> <p>15 Q. Do you know who any of those</p> <p>16 people are?</p> <p>17 A. I know Stewart Kidder is head of</p> <p>18 Corrections, I think.</p> <p>19 Q. Not quite.</p> <p>20 A. I don't know his official title.</p> <p>21 And I'm not sure who the other person is;</p> <p>22 Glassano? I'm not sure.</p> <p>23 Q. He's a lawyer from the</p> <p>24 Department of Corrections.</p> <p>25 Do you know who Nan Ferri is?</p> <p style="text-align: right;">[Page 33]</p>

[9] (Pages 30 to 33)

1	Cheryl Freed	34	1	Cheryl Freed	36
2	A. I believe she worked with Stew		2	Q. Did you ever go to a meeting at	
3	Kidder.		3	Lincoln Correctional?	
4	Q. Have you ever spoken to Nan		4	A. No.	
5	Ferri?		5	Q. Have you ever been to Lincoln	
6	A. No.		6	Correctional?	
7	Q. When was the first time you ever		7	A. No.	
8	spoke to Roxanne Creen?		8	Q. Do you know whether a contract	
9	A. Several times throughout our		9	at Lincoln was terminated or not?	
10	contract.		10	A. I thought it was finished.	
11	Q. What were the conversations		11	I thought it was complete.	
12	about in general?		12	Q. "Finished," meaning that it	
13	A. I can't recall. You know,		13	expired?	
14	I honestly don't know but we did have		14	A. Right.	
15	conversations.		15	Q. As it's supposed to in the	
16	Q. About day-to-day matters on the		16	contract; correct?	
17	contracts?		17	A. Yes.	
18	A. Basically, yes.		18	Q. When Mr. Gallagher returned to	
19	Q. Did you ever have conversations		19	your offices on May 9th, did he give you any	
20	with her about missed payments?		20	money?	
21	A. I'm trying to think if I,		21	A. I don't recall if he had	
22	personally, had that conversation with her.		22	collections from other facilities. I don't	
23	She might have said that we were behind a		23	remember.	
24	commission.		24	Q. Did he have copies of the	
25	Q. But you are not sure?		25	receipts from Shawangunk?	
	[Page 34]			[Page 36]	
1	Cheryl Freed	35	1	Cheryl Freed	37
2	A. Yes. I am not one hundred		2	A. I don't recall. I know I had	
3	percent sure.		3	them from the fax. I don't recall if he had	
4	Q. Did you ever have conversations		4	receipts, also.	
5	with stewards from other DOCS correctional		5	Q. Did Mr. Gallagher tell you	
6	facilities about missed payments?		6	whether he had ever asked to leave Shawangunk	
7	A. Sometime, I believe I spoke to		7	on May 9th.	
8	Natalie from Otisville.		8	A. I'm sorry?	
9	Q. Did you ever speak to Marsha		9	Q. Did Mr. Gallagher ever say to	
10	Riley?		10	you that he had ever asked to leave Shawangunk	
11	A. Yes, I have spoken to Marsha		11	on May 9th?	
12	before.		12	A. I know he wanted to call us.	
13	Q. What do you recall speaking to		13	I don't know if he ever asked to leave.	
14	her about?		14	Q. You know that because he told	
15	A. I have spoken to her about		15	you?	
16	moving equipment, commissions. I can't recall		16	A. About?	
17	anything else.		17	Q. Wanting to call you.	
18	Q. What did you speak to her about		18	A. Yes.	
19	in relation to commissions?		19	Q. But he didn't say whether he had	
20	A. She probably told us that we		20	ever asked to leave; is that correct?	
21	were late on commissions.		21	A. He didn't say anything to me,	
22	Q. Do you know what facility she		22	no.	
23	worked at?		23	MS. SCHULZE: Okay. That's it.	
24	A. Marsha? Lincoln Correctional,		24	MR. SUSSMAN: I have a couple	
25	I believe.		25	of questions I would like to ask you.	
	[Page 35]			[Page 37]	

[10] (Pages 34 to 37)

<p>1 Cheryl Freed 38</p> <p>2 EXAMINATION BY</p> <p>3 MR. SUSSMAN:</p> <p>4 Q. Ms. Freed, basically, the same</p> <p>5 rules apply. If you don't understand, please</p> <p>6 indicate that you don't understand. If you do,</p> <p>7 please answer the question.</p> <p>8 Why were commissions, if you</p> <p>9 know, why were commissions paid late by your</p> <p>10 company? Do you have any knowledge as to that?</p> <p>11 A. No.</p> <p>12 Q. You don't know why they were</p> <p>13 paid late?</p> <p>14 A. I know we had a problem with</p> <p>15 Shawangunk with food.</p> <p>16 Q. What was the problem?</p> <p>17 A. There were shortages on the</p> <p>18 food.</p> <p>19 Q. What does that mean, "there were</p> <p>20 shortages"?</p> <p>21 A. The machines are inventoried and</p> <p>22 there is a meter taken from the machine and we</p> <p>23 were getting shortages on the inventories of</p> <p>24 the machines.</p> <p>25 Q. For how long a period of time</p> <p style="text-align: right;">[Page 38]</p>	<p>1 Cheryl Freed 40</p> <p>2 Q. Had this ever happened before in</p> <p>3 your experience with the Department of</p> <p>4 Correctional Services contracts?</p> <p>5 A. No.</p> <p>6 Q. Did you ever receive from</p> <p>7 Shawangunk, to your knowledge, in the period</p> <p>8 from, let's say thirty days before May 9th,</p> <p>9 let's say April 9th on, any demand letter</p> <p>10 saying that you owe so much money and if you</p> <p>11 don't pay so much money, the facility is going</p> <p>12 to consider you in breach? Did you ever get</p> <p>13 any such letter; that you know of?</p> <p>14 MR. SCHULZE: Objection.</p> <p>15 A. No.</p> <p>16 Q. Did you receive any letter from</p> <p>17 the facility, Ms. Creen or anyone else,</p> <p>18 indicating that if certain payments were not</p> <p>19 made by certain dates, your driver would be</p> <p>20 required to provide the monies directly from</p> <p>21 the machine to Shawangunk?</p> <p>22 MR. SCHULZE: Objection.</p> <p>23 A. No.</p> <p>24 Q. You said you were shocked; your</p> <p>25 reaction was one of shock. Why were you</p> <p style="text-align: right;">[Page 40]</p>
<p>1 Cheryl Freed 39</p> <p>2 was that, that shortages were going on at</p> <p>3 Shawangunk?</p> <p>4 A. I'm not exactly sure. I'm</p> <p>5 saying a few months.</p> <p>6 Q. Do you know whether anyone from</p> <p>7 your company ever notified Shawangunk of the</p> <p>8 shortages?</p> <p>9 A. I believe Mike did, yes.</p> <p>10 Q. Do you know whether by the time</p> <p>11 that money from the machines was demanded of</p> <p>12 Mr. Gallagher, that the issue of shortages had</p> <p>13 been resolved?</p> <p>14 A. I don't believe so, no.</p> <p>15 Q. Now, before you got this call in</p> <p>16 the mid-morning on the 9th of May from</p> <p>17 Ms. Creen, had Ms. Creen ever called to speak</p> <p>18 with you and advise you that she was</p> <p>19 considering doing what she did on the 9th?</p> <p>20 MR. SCHULZE: Objection.</p> <p>21 Q. Did anyone from Shawangunk ever</p> <p>22 call you in advance on the 9th and advise you</p> <p>23 that money was going to be demanded of your</p> <p>24 driver?</p> <p>25 A. No.</p> <p style="text-align: right;">[Page 39]</p>	<p>1 Cheryl Freed 41</p> <p>2 shocked?</p> <p>3 MR. SCHULZE: Objection.</p> <p>4 MR. SUSSMAN: You can explain.</p> <p>5 A. Why I was shocked?</p> <p>6 Q. Yes.</p> <p>7 A. It just sounded unbelievable to</p> <p>8 me.</p> <p>9 MR. SCHULZE: Objection.</p> <p>10 Q. Why?</p> <p>11 A. That he could be held in a</p> <p>12 correctional facility against his will.</p> <p>13 Q. Now you say you spoke to</p> <p>14 Mr. Gallagher when he came back and he appeared</p> <p>15 to you quite nervous; is that right?</p> <p>16 A. Yes.</p> <p>17 Q. How long have you known</p> <p>18 Mr. Gallagher?</p> <p>19 A. I believe he has worked with us</p> <p>20 for a year or two.</p> <p>21 Q. Had you ever seen him as you saw</p> <p>22 him that morning?</p> <p>23 MR. SCHULZE: Objection.</p> <p>24 A. No.</p> <p>25 Q. You were asked questions about</p> <p style="text-align: right;">[Page 41]</p>

[11] (Pages 38 to 41)



1 Cheryl Freed 42	1 Cheryl Freed 44
2 contacts with other stewards and,	2 A. No.
3 specifically, the name of Marsha Riley came up.	3 MR. SUSSMAN: Okay, thank you
4 Did you have any contact with Ms. Riley in	4 very much. Counsel is permitted to
5 which Ms. Riley indicated to you that	5 ask you questions if he has anything
6 commissions were late?	6 further.
7 A. Yes.	7 MR. SCHULZE: Yes, I do.
8 Q. And did Ms. Riley indicate to	8 CONTINUING EXAMINATION
9 you that as a consequence of commissions being	9 BY MR. SCHULZE:
10 late, she was going to demand of the driver	10 Q. If you recall, your counsel just
11 money from the machines?	11 asked you if you had any reason for being
12 A. No.	12 delinquent in payments at Shawangunk and you
13 Q. Did any other steward ever make	13 mentioned that there were problems with the
14 any statements like that to you?	14 food.
15 A. Like what?	15 A. Right.
16 Q. That he or she would command of	16 Q. Are you claiming that you were
17 the driver monies directly from the machines	17 withholding commissions?
18 because commissions were late?	18 A. What do you mean, "withholding
19 A. No.	19 commissions"?
20 Q. You mentioned that Ms. Creen and	20 Q. That you were able to pay but
21 you had this conversation in mid-morning.	21 were not because of that.
22 Approximately how long did that conversation	22 A. I don't believe so.
23 last?	23 Q. Did you ever tell DOCS that you
24 A. Maybe five minutes.	24 were withholding commissions because of
25 Q. Was there any other party to the	25 problems with the food?
[Page 42]	[Page 44]
1 Cheryl Freed 43	1 Cheryl Freed 45
2 conversation from your end?	2 A. I never spoke to them.
3 A. I don't believe so.	3 Q. Did anyone at Rockland?
4 Q. In this conversation, did	4 A. I don't know. I don't speak to
5 Ms. Creen say anything to you about having	5 them so I don't know.
6 conferred with legal counsel and having been	6 Q. Did anyone ever tell you that
7 authorized to take the steps she took by legal	7 Rockland was doing that?
8 counsel?	8 A. That we were holding back
9 A. No.	9 commissions?
10 Q. You told counsel earlier that	10 Q. Yes.
11 during the conversation with Ms. Creen, you	11 A. Not that I know of.
12 told Ms. Creen words to the affect that how	12 Q. Do you have any reason to
13 could you do this and you protested; is that	13 believe that was the case?
14 accurate?	14 A. Because of the problem, you are
15 A. Yes.	15 saying?
16 Q. And do you recall in response to	16 Q. Yes.
17 your protesting, what it is she said --	17 A. Not really.
18 MR. SCHULZE: Objection.	18 Q. You just testified that in your
19 Q. During the conversation?	19 call of May 9th, Ms. Creen did not state that
20 A. She did say that we owe her the	20 she had conferred with legal counsel?
21 money and she was going to keep doing this	21 A. She didn't tell me that.
22 until we pay up all the money.	22 Q. Do you know whether or not she
23 Q. Did she give you during that	23 had conferred with legal counsel?
24 conversation any figure which she claimed you	24 A. I only found that afterwards.
25 owed?	25 Q. How did you find that out?
[Page 43]	[Page 45]

[12] (Pages 42 to 45)

1 Cheryl Freed 46  
 2 A. From talking to Mike and  
 3 Mr. Sussman.  
 4 MS. SCHULZE: Okay. I don't  
 5 know if you want to waive privilege  
 6 here, do you?  
 7 MR. SUSSMAN: No, of course not.  
 8 It's not relevant when she  
 9 found out that fact.  
 10 (To witness): You don't have to  
 11 speak. Please don't discuss your  
 12 conversations you had with me.  
 13 MR. SCHULZE: I don't want to  
 14 get into this. Here's all I am  
 15 getting at; okay?  
 16 Q. When Roxanne talked to you on  
 17 May 9th, do you know whether or not she had  
 18 conferred with legal counsel before that?  
 19 A. I don't know.  
 20 MR. SCHULZE: Okay. I'm all done.  
 21  
 22 \_\_\_\_\_  
 23 Sworn and subscribed to before me  
 24 this \_\_\_\_ day of \_\_\_\_\_, 2008.  
 25 Notary Public

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CERTIFICATION

STATE OF NEW YORK )  
 ) ss.  
 COUNTY OF WESTCHESTER )

I, KATHRYN MACDONALD, a  
 Stenographic Reporter and Notary Public of the  
 State of New York, do hereby certify:  
 That the witness whose  
 deposition is herein set forth was duly sworn  
 by me; that the within transcript is an  
 accurate record of the testimony given by such  
 witness, to the best of my knowledge and  
 ability.

That I am not related to any of  
 the parties involved in this matter, and that I  
 have no personal interest whatsoever in the  
 outcome thereof.

\_\_\_\_\_  
 Kathryn MacDonald  
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EXHIBITS

None.

INFORMATION  
REQUESTED

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ERRATA PAGE

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